



BILL HASLAM
GOVERNOR

STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
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710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

PATRICK SMITH
ACTING COMMISSIONER

February 1, 2011

Via Electronic and United States Mail

Mr. John Aitken, Director of Schools
Shelby County Schools
160 South Hollywood Street
Memphis, TN 38112-4801
jaitken@scsk12.org

Dr. Kriner Cash, Director of Schools
Memphis City Schools
2597 Avery Avenue
Memphis, TN 38112
cashk@mcsk12.net

Re: Referendum on Transfer of Administration of Memphis City Schools

Dear Directors Aitken and Cash:

The Department of Education has been apprised of the pending referendum relating to the proposed transfer of the administration of Memphis City Schools to the Shelby County Board of Education. The Chancery Court of Tennessee for the 30th Judicial District at Memphis ordered that the Shelby County Election Commission schedule the referendum within 45 to 60 days after January 13, 2011. The Commission, in turn, scheduled it for March 8, 2011.

As you know, this is a decision of substantial magnitude that will have a wide ranging effect upon teachers, administrators, and most importantly, students. The Department's concern is that there be an orderly transition process in place with sufficient time to accomplish as smooth and seamless a transition as possible should the voters approve a transfer.

The purpose of this letter is to advise you of a legal requirement placed upon the Commissioner of Education by Tenn. Code Ann. §49-5-203(d) in the context of a change in any governmental structure or organization. The Commissioner must make a determination that the rights and privileges afforded to teachers by Section 49-5-203 are not impaired, interrupted, or diminished by organizational changes like the one proposed by the referendum.

The statute requires that this determination be made "[p]rior to the change in any governmental structure or organization becoming effective." It appears that the determination must be made prior to March 8, 2011. The Department is not aware of any other effective date that may have been established by the parties or the Court. To date, the Department of Education has not received any information related to the proposed transfer. Accordingly, I will not be in a position to make a determination that no impairment, interruption, or diminution of such rights has occurred. Based upon the present set of circumstances, just the opposite will occur, that is, I will be compelled to determine that the rights of teachers have been impaired, interrupted and diminished.

Mr. John Aitken & Dr. Kriner Cash
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The Department is in this position because it has received no information concerning the details of the proposed transition of Memphis City Schools to the administration of the Shelby County Board of Education. In order to make a favorable determination that no impairment, interruption or diminution has occurred, the Department must review a comprehensive plan addressing in detail all of the pertinent aspects related to the transition of teachers.

The state is not required by law to approve other issues related to the transfer, but it seems necessary for the Department to have a better understanding of the processes that have been put in motion to ensure that the best interest of students remains the top priority. Therefore, the Department requests that in addition to the personnel plan for teachers that is required by law to be approved by the Department, a more comprehensive transition plan be submitted outlining other important issues that must be addressed to ensure this transition will be accomplished without negative consequences. While the Shelby County Board of Education and the Memphis City Schools are not required to follow Tenn. Code Ann. §§49-2-1201 through 49-2-1208 in the current situation, the statutes may be helpful in providing detailed guidance on not only the information for which the Department will be looking, but also an orderly procedure for effecting a transaction of the magnitude contemplated in Shelby County. For your convenience, attached is a list of items to be included in the personnel plan for teachers. In addition, we have taken the liberty to include a non-exhaustive list of other items and practical considerations that require attention prior as part of a comprehensive plan.

To provide adequate time for review, the Department requests receipt of the personnel plan for teachers required by law from Shelby County Schools no later than February 15, 2011. Additionally, we respectfully request submission of a comprehensive transition plan developed by both school districts on or before March 1, 2011.

The Department stands ready to assist all parties involved. Our paramount concern is to safeguard the educational interests of all students who may be impacted by a transfer.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick Smith". The signature is fluid and cursive, with the first name "Patrick" and last name "Smith" clearly distinguishable.

Patrick Smith

Enclosure

Transition Plan Attachment

Items that must be included in the personnel plan for teachers required by Tenn. Code Ann. §49-5-203:

1. Salary;
2. Pension and retirement benefits;
3. Sick leave;
4. Tenure status; and
5. Contract rights;

Other items which may be included in a general transition plan for the transfer of Memphis City Schools (MCS) to Shelby County Schools (SCS):

Staff - While non-certificated staff are not included in the plan required in Tenn. Code Ann. §49-5-203, a plan for staffing by SCS may need to be developed and many of the same issues as stated above for teachers may need to be considered.

Contracts - Leases and contracts in which MCS is a party will need to be inventoried and evaluated.

Student transportation - Buses, routes and drivers to serve students formerly in MCS, and any contracts associated therewith, will have to be evaluated by SCS. Preparation of a transportation plan before consolidation would be suggested.

School Board - Upon transfer, the SCS Board of Education will serve as the board for the newly merged school district. However, the legal issue of equal representation, among others, will need to be addressed.

Student assignment, student transfers and public school choice - If the transfer occurs, new policies related to zoning and student assignment to schools would have to be adopted. Also, a determination of how public school choice (as may be required under applicable accountability laws) would be implemented in the newly merged school system would have to be made prior to the beginning of the next school year.

Student Services – Development of a plan to ensure implementation of required student services (e.g. special education, “Section 504”/individual health care plans, homebound services).

Student discipline – Identification and current status of students under suspension or expulsion and pertinent information related to the expiration of their disciplinary actions should be reviewed.

School facilities and equipment – Compilation of an inventory of real and personal property and a plan for efficient transfer and upkeep.

Debt – Resolution of issues related to incurred debt of MCS.

Charter Schools – Review of charter schools currently operating in MCS or approved for operation and the impact of the transfer.